STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
Owens, PJ, and Talbot and Meter, JJ

HIGHLAND-HOWELL
DEVELOPMENT CO., LLC,

Plaintiff-Appellee,

v

TOWNSHIP OF MARION,

Defendant-Appellant.
_____/

Supreme Court No. 122843

Court of Appeals No. 231937

Livingston County Circuit Court
Case No. 98-16767-CZ
Hon. Stanley J. Latreille

BRIEF ON APPEAL – APPELLEE

Oral Argument Requested

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Jurisdictional Statement

The circuit court granted summary disposition to defendant-appellant Marion Township under MCR 2.116(C)(4) on the ground that plaintiff-appellee Highland-Howell Development Co., LLC's claim was within the exclusive jurisdiction of the Michigan Tax Tribunal. Appendix, p 29a-30a. This was a final order. *Id.,* p 30a. The court of appeals considered the case on leave granted and reversed. Appendix, p 31a. This Court granted leave to appeal. 468 Mich 941 (2003). This Court has jurisdiction under MCR 7.301(A)(2) and MCR 7.302(G)(3).

Counter-Statement of Question Involved

Does the circuit court, not the Michigan Tax Tribunal, have subject matter jurisdiction over a claim that the defendant-appellant Marion Township breached its promise to install a sewer trunk line and provide sewer service to plaintiff-appellee Highland-Howell Development by a certain date, when the promise induced Highland to purchase property, devote time and expense to preparing to develop the property, acquiesce in a disproportionate special assessment on the property, decline an offer of sewer service from an adjacent city, and refrain from establishing a private sewer system?

The circuit court answered "no."

The court of appeals answered "yes."

Appellee Highland answers "yes."

Summary of Argument

A reasonable reading of Highland's complaint shows that it states claims for breach of contract and promissory estoppel. As such, it is within the circuit court's jurisdiction. It does not challenge a special assessment or raise other taxation issues that are within the Michigan Tax Tribunal's exclusive jurisdiction.

Counter-Statement of Facts

I. Nature of the Action[1]

Defendant-appellant Marion Township wanted to assure that manufactured home projects would be developed in a remote part of the township, separated from other township land by a freeway, so that it would not be forced to develop other land for manufactured homes, as an adjacent township was ordered to do. To carry out this plan, it induced plaintiff-appellee Highland-Howell Development Co., LLC to purchase a large tract of land, begin planning for a manufactured home development, and forego its right to object to a $3,250,000 special assessment for sewer construction. The township promised Highland that the township would construct a sewer trunk line across Highland's property and that sewer service would be available by April 1997. After the special assessment was imposed (through a procedure that violated the statute allowing such assessments), the township completely changed its sewer construction plans, eliminated the trunk line across Highland's property, and still has not provided the promised improvements to Highland.

Highland sued the township in Livingston Circuit Court, asserting a breach of contract and promissory estoppel claim for damages from the loss of value of its land, the delay in developing its land, and the township's failure to install the sewer line.[2] On

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[1] This section summarizes the nature of the case. Detailed references to the record are in the following sections of the counter-statement of facts.

[2] Highland also filed two petitions in the Michigan Tax Tribunal, challenging the process by which the township adopted the assessment and challenging the amount of the special assessment because it is not in proportion to the benefit to Highland's property. Those claims are separate from the breach of contract and promissory estoppel claims in the circuit court, which seek damages for the township's breach of its promises to Highland.

the township's motion, the circuit court dismissed the case for lack of subject matter jurisdiction, concluding that the Michigan Tax Tribunal has exclusive jurisdiction over the claims. The court of appeals reversed, holding that the contract and promissory estoppel claims are not within the tax tribunal's jurisdiction and properly belong in the circuit court. This Court granted leave to appeal.

II. Summary of Facts

Highland owns a large tract of land in the northeast section of Marion Township. Appendix, p 3b, ¶ 4 (affidavit opposing summary disposition). The property extends for about a mile along I-96, south of the City of Howell. The property is approved for a manufactured home project. *Id.* In 1996, Highland had a contract to purchase the property that allowed Highland to cancel without penalty. *Id.* During this option period, Highland investigated whether it was economically feasible to develop the land for manufactured homes. *Id.*

Marion Township wanted Highland to buy and develop the land for several reasons. First, the land is in a relatively remote location in the township (separated from the remainder of the township by an expressway—I-96) where the township preferred to have manufactured homes. Appendix, p 3b, ¶ 5. The township feared that, if this land was not developed for manufactured homes, the township might be forced to allow them in a location it considered less desirable for that type of use. Appendix, pp 3b-4b, ¶ 5. Second, the township was planning a sewer project and believed that it was necessary to cross Highland's property with an east-west sewer trunk line to provide sewer service to other properties. Appendix, p 4b, ¶ 5. Highland would agree to the trunk line across the property (and the township would not have to pay for an easement) because the line

would benefit Highland's proposed development, substantially reducing the cost for homes on the property to tap in to the sewer system. *Id.* The reduction in cost would be a result of Highland being able to tap directly into the trunk line rather than build its own line to tap into a sewer line at the boundary of its property. Third, the township expected Highland to agree to pay a disproportionate amount of the sewer development costs through a special assessment. *Id.*

To induce Highland to purchase the property and proceed with the development, the township promised Highland that the east-west trunk line serving its property would be installed by April 1997. Appendix, p 4b, ¶ 6. The township board adopted a set of sewer plans that confirmed this promise. The plans included the east-west trunk line across Highland's property. *Id.*

In reliance on the township's promises, Highland committed to the purchase of the property and began engineering the site. Appendix, p 4b, ¶ 7. The township purported to approve a special assessment roll at a township board meeting in November 1996. Appendix, p 5b, ¶ 11. In reliance on the township's promises, Highland did not object at that time to the disproportionately large amount of the sewer improvement costs allocated to its property. Appendix, p 4b, ¶ 7. Believing that it would soon receive sewer service from the township, Highland also passed up the opportunity to obtain sewer service from the City of Howell and did not pursue the alternative of seeking approval of a privately owned wastewater treatment system. Appendix, p 22a, ¶ 10 (first amended complaint).

After Highland committed to purchase the property, the township made sweeping changes to the sewer project, including changes in what was to be built, the costs, and

the properties served. Appendix, p 4b, ¶ 8. For example, the township abandoned its plan to construct its own sewage treatment plant and reversed the flow of the entire system in order to connect to the City of Howell's facility. *Id.* The costs that the township adopted in 1996 were $8,990,000, but now substantially exceed $20,000,000. *Id.*

The most important of these changes as far as Highland was concerned was that the township removed the east-west trunk line it had promised to install across Highland's property. Appendix, p 4b, ¶ 9. Highland learned of this change in mid-1998. *Id.* When Highland questioned the township about this change, a township board member stated in front of several witnesses: "If you [Highland] think you're getting screwed, you're right." *Id.* As of this date, the township has not installed the east-west trunk line. *Id.* It has no plans to do so.

The delay in the promised sewer service to Highland's property (since 1997) has caused Highland significant damages. Highland incurred the cost of holding the undeveloped property and will incur increased construction costs when the property is developed. Elimination of the east-west trunk line will also substantially increase the cost to develop the property, requiring Highland to bear the cost of building its own sewer lines across the mile-long length of the property. Appendix, p 22a, ¶ 13. In addition, in the latter part of 1999, a competing manufactured home development opened nearby and has been absorbing Highland's potential market. Appendix, pp 4b-5b, ¶ 10.

III. Proceedings Below

A. Circuit Court

Highland filed this lawsuit in the Livingston Circuit Court in August 1998, shortly after it discovered that the township eliminated the promised sewer trunk line. Highland sought damages caused by the township's breach of its promises to install the line and to have sewer service available by April 1997 and an injunction against enforcement of the special assessment. Appendix, pp 14a-19a (original complaint).

After failed settlement discussions, the township moved for summary disposition in January 2000, arguing that Highland's claims were within the exclusive jurisdiction of the Michigan Tax Tribunal. Highland filed a First Amended Complaint while the motion for summary disposition was pending.[3] Appendix, pp 20a-25a. The amended complaint contained two counts: count I for contractual damages and count II for injunctive relief. Count I states that the township promised to install the sewer line by April 1997, with the specific intention of inducing Highland to rely on that promise. Appendix, p 21a, ¶¶ 5-8. It also states that Highland justifiably relied on the township's promise to its detriment in various ways, including by acquiring and improving the property, by declining an offer of

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[3] Although the township characterizes filing the amended complaint as a "transparent attempt to side-step the Township's summary disposition motion" (township brief, p 2), the filing of an amended pleading in response to a summary disposition motion is not at all unusual and certainly not improper. Indeed, MCR 2.116(I)(5) requires the court to give a party an opportunity to amend in response to a summary disposition motion under certain sections of the rule. Although that rule does not apply here, since the motion was under MCR 2.116(C)(4) for lack of jurisdiction, the spirit of the rule applies. Corrigan, Giovan, Bisio, Brooks & Saylor, Civil Procedure Before Trial, ¶ 7:562 (West 2003). In any event, MCR 2.118(A)(1) gave Highland an absolute right to amend its complaint because the township had not yet served an answer to the complaint. *Malburg v Sterling Heights,* 152 Mich App 484, 493, 394 NW2d 455, 459 (1986).

sewer service from the City of Howell, by not seeking approval of a private system, and by not objecting to the disproportionate special assessment imposed on its property. Appendix, p 22a ¶ 10. The amended complaint states that the township breached its promises and caused Highland to suffer substantial damages. *Id.*, ¶¶ 11-13.

Count II states that the township violated statutory requirements for the lawful adoption of sewer improvements (appendix, p 23a, ¶¶15-18) and an assessment roll. *Id.*, ¶ 19. The relief sought in count II was an injunction stopping the township from installing improvements that violate the statutes and from enforcing an unlawful assessment roll. In light of the passage of time and the township's installation of substantial improvements after Highland filed its complaint, Highland did not pursue this relief. Also, since the tax tribunal denied the township's motion to dismiss Highland's petition there, the validity of the process the township followed in approving the special assessment is at issue in the tax tribunal and Highland will therefore not seek an injunction against enforcement of the assessment in the circuit court. Thus the only portion of the First Amended Complaint currently at issue is count I. The court of appeals noted that Highland did not contest dismissal of count II. Appendix, p 31a, n2; p 33a.

The circuit court granted the township's motion for summary disposition. Appendix, pp 29a-30a. In deciding the motion, the court considered the claims in the First Amended Complaint. Appendix, p 30a.

B. Tax Tribunal

At the same time that Highland filed its circuit court case, it also filed a petition in the Michigan Tax Tribunal seeking a reduction of the special assessment, claiming that

the assessment is not proportionate to the benefit to the property. Appendix, pp 10a-13a (Petition to Contest Special Assessment).[4] Highland had not previously contested the assessment because it had agreed not to do so in exchange for the township's promise to install the sewer trunk line by April 1997. Appendix, p 4b, ¶ 7 (affidavit opposing summary disposition). After the township imposed a supplemental assessment, Highland filed a second petition in the tax tribunal. Appendix, pp 1b-2b. The tax tribunal consolidated the petitions. Appendix, pp 10b-11b.

After the circuit court dismissed this case, Highland moved to amend its tax tribunal petition to add the identical claims that the circuit court held were within the exclusive jurisdiction of the tax tribunal. Appendix, pp 12b-15b. The proposed amended tax tribunal petition is at appendix pp 16b-23b.[5] Count 3 of the proposed amended petition (appendix, pp 19b-21b) is virtually identical to count I of the First Amended Complaint in the circuit court. Appendix, pp 21a-22a. The tax tribunal denied the motion to amend, holding that "the Tribunal does not, however, have subject matter jurisdiction over Petitioner's [Highland's] breach of contract and/or promissory estoppel claim under MCL 205.731, as said claim is not a property tax matter . . . ." Appendix, p 26b. *Accord,* appendix, p 27b (expressly denying motion to amend). Highland did not appeal this decision because it was not a final order.

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[4] The Court can take judicial notice of the pleadings and other papers filed in the tax tribunal. MRE 201(b)(2); *In re Ford's Estate,* 339 Mich 339, 347, 63 NW2d 417, 421 (1954); *Hawkeye Cas Co v Frisbee,* 316 Mich 540, 549, 25 NW2d 521, 525 (1947).

[5] It was one of the exhibits to the motion to amend. Appendix, p 14b, ¶ 4.

C. Court of Appeals

The court of appeals reversed the circuit court in an unpublished per curiam opinion entered without oral argument.[6] Appendix, pp 31a-34a. The court reviewed the tax tribunal's jurisdictional statute, MCL 205.731, and two cases of this Court applying that statute, *Wikman v Novi,* 413 Mich 617, 322 NW2d 103 (1982), and *Romulus City Treasurer v Wayne County Drain Comm'r,* 413 Mich 728, 322 NW2d 152 (1982).

The court analyzed count I of the First Amended Complaint and concluded that it did not involve matters within the tax tribunal's exclusive jurisdiction because it "did not challenge the special assessment, nor did it challenge the improvements that were actually made as part of that special assessment" Appendix, p 33a. Instead, count I "sought damages for a breach of contract." *Id.* The court rejected the township's argument that there was no mutuality of obligation supporting a contract because factual development could support a conclusion that Highland undertook an obligation to purchase the property in exchange for the township's promise to install the sewer line. Appendix, p 34a. Finally, the court also concluded that count I of the First Amended Complaint stated a claim for promissory estoppel. *Id.*

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[6] The township seems to suggest that the court of appeals acted improperly in proceeding "without the benefit of oral argument." Township brief, p 4. The court of appeals presumably acted in conformity with MCR 7.214(E)(1), which provides for decision of cases without oral argument when a panel unanimously concludes argument is not necessary because there is a recent decision that decides the issue, the briefs and record adequately present the case, or the appeal is without merit. The township's court of appeals brief did not contain a statement urging oral argument. MCR 7.214(E)(2).

The court of appeals remanded the case to the circuit court for further proceedings on the merits of Highland's claims. Appendix, p 34a. The township sought review in this Court, which granted the township's application for leave to appeal. 468 Mich 941 (2003).

Argument

I. Standard of Review

The standard of review in the township's brief is correct: This Court reviews questions of subject matter jurisdiction and statutory interpretation *de novo.*

II. The Circuit Court, Not the Tax Tribunal, Has Jurisdiction Over Highland-Howell's Contract and Promissory Estoppel Claim

The tax tribunal has exclusive jurisdiction to determine whether Highland's special assessment is proportionate to the benefits conferred on Highland and whether the township followed the proper statutory procedures for imposing the assessment. Highland does not ask the circuit court to make those determinations. Highland's claim in the circuit court is for breach of contract and promissory estoppel. That is not within the tax tribunal's exclusive jurisdiction and therefore is within the circuit court's jurisdiction.

A. What Is Not at Issue: Count II of the First Amended Complaint Is Irrelevant

The township's brief is replete with references to Highland's purported challenge to the special assessment, which was involved in count II. This diverts attention from the real issue—whether count I of the First Amended Complaint states a claim within the circuit court's subject matter jurisdiction.

As noted above (statement of facts, III.A), Highland abandoned the claims in count II of the First Amended Complaint because of the passage of time and subsequent developments. Those are the only claims in the First Amended Complaint that involve the validity of the special assessment. The court of appeals noted that

Highland abandoned those claims. Appendix, p 33a ("plaintiff wisely abandoned count II"). Thus the township's repeated claims that Highland is challenging the special assessment in the circuit court is wrong. Comparison of the prayers for relief in counts I and II shows that Highland's challenge to the validity of the assessment was limited to count II. Appendix, p 24a. The prayer for relief in the contract count is simply for Highland's breach of contract damages. Appendix, p 22a.

B. The Court Must Accept As True All Allegations in the First Amended Complaint

In deciding the question of jurisdiction, the Court must accept as true all the allegations in Highland's First Amended Complaint. *Gordon v Sadasivan,* 144 Mich App 113, 119, 373 NW2d 258, 260-261 (1985) (must accept well-pled allegations of party opposing dismissal for lack of subject matter jurisdiction). It must also consider the affidavit that Highland submitted. MCR 2.116(G)(5).

The motion must be decided with reference to the First Amended Complaint, not the original complaint, notwithstanding the township's attempt to denigrate the First Amended Complaint as "creative pleading" simply "adorn[ing]" the original complaint. Township's brief, p 2. The First Amended Complaint supersedes the original complaint. MCR 2.118(A)(4); appendix, p 31a n1 (court of appeals opinion, citing rule and stating "we are not persuaded that there is any relevance to plaintiff's original complaint").

Thus, the discussion below assumes that the factual claims in the First Amended Complaint are true and the question is: Given the claim that the township did not perform its promise to install the sewer line on Highland's property, did the circuit court have subject matter jurisdiction?

C. The Claims Do Not Challenge the Special Assessment

To decide this case, the Court must (1) examine the First Amended Complaint and determine the nature of the claims in count I and then (2) determine whether such claims fall within the tax tribunal's exclusive jurisdiction. This section examines the nature of the claims. Section II.D below discusses jurisdiction over the claims.

The linchpin of the township's argument is that the First Amended Complaint challenges the special assessment and therefore is within the tax tribunal's exclusive jurisdiction. *E.g.,* township brief, p 2 (characterizing complaint as "challenge to the validity of its special assessment").

We agree with the township's argument that labels are not conclusive and it is the substance of the complaint that controls. Our disagreement is with the township's characterization of the First Amended Complaint. Nowhere does the township fairly analyze count I of the First Amended Complaint and test it against the elements of a claim for breach of contract or promissory estoppel.

1. The First Amended Complaint States Claims for Breach of Contract and Promissory Estoppel

The amended complaint states the elements of a contract claim: existence and terms of a contract, breach, and damages. *Webster v Edward D Jones & Co, LP,* 197 F3d 815, 819 (CA 6 1999); *Wilson v Continental Dev Co*, 112 F Supp 2d 648, 663 (WD Mich 1999); M Civ JI 140.01. Existence of a contract includes a promise on a proper subject matter, consideration, and mutual of agreement and obligation. *Mallory v*

Detroit, 181 Mich App 121, 127, 449 NW2d 115, 118 (1989). *Accord,* appendix, p 33a (court of appeals opinion). Each of these elements is alleged:

- Promise: "Defendant repeatedly promised Plaintiff that Defendant would install a usable east-west sewer line through Plaintiff's property by April, 1997." Appendix, p 21a, ¶ 7.

- Consideration: Highland acquired and improved the property, declined sewer service from the City of Howell, did not seek approval of a privately owned wastewater treatment system, and did not object to the disproportionate assessment. Appendix, p 22a, ¶ 10. This detriment to Highland constitutes consideration. *Highland Park v Grant-Mackenzie Co,* 366 Mich 430, 446, 115 NW2d 270, 278 (1962) ("consideration for a promise . . . may lie in a detriment to the promisee").

- Mutual agreement and obligation: The township and Highland agreed to the following mutual obligations: Highland would "purchase the property and develop it for manufactured homes" and the township "would install a usable east-west sewer line through Plaintiff's property by April, 1997." Appendix, p 21a, ¶ 7.[7]

- Breach: "Defendant breached its promises to Plaintiff and as of the date of this amended complaint, Defendant still has not made sewer service available to Plaintiff's property." Appendix, p 22a, ¶ 11.

- Damages: "Defendant's breach of its promises has caused Plaintiff damages in excess of $25,000 including the loss of the value of Plaintiff's proposed development, the loss of the value of Plaintiff's land, the expenses of acquiring, holding and improving the land, and the loss of the value of the east-west sewer line." *Id.,* ¶ 13.

The court of appeals properly reviewed count I of the First Amended Complaint and concluded that it states a breach of contract claim:

> [C]ount I did not challenge the special assessment, nor did it challenge the improvements that were actually made as part of that special assessment. Instead, count I alleged that defendant breached its promise to make an improvement that was not part of the final special assessment district. In other words, plaintiff sought damages for a breach of contract.

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[7] The court of appeals held that there was at least a factual question as to whether there was mutuality of obligation. Appendix, p 34a.

Appendix, p 33a.

The First Amended Complaint also states the elements of a promissory estoppel claim: "(1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of promisee, (3) which in fact produced reliance or forbearance of that nature, and (4) in circumstances such that the promise must be enforced if injustice is to be avoided." *Ardt v Titan Ins Co,* 233 Mich App 685, 692, 593 NW2d 215, 219 (1999). *Accord,* appendix, p 34a (court of appeals opinion). The First Amended Complaint states the elements of a promissory estoppel claim:

- Promise: "Defendant repeatedly promised Plaintiff that Defendant would install a usable east-west sewer line through Plaintiff's property by April, 1997." Appendix, p 21a, ¶ 7. *Accord,* appendix, p 34a (court of appeals opinion).

- The township should reasonably have expected that its promise would induce action by Highland: This can be inferred from the nature of the promise (to provide sewer service by a specific date and to build a valuable sewer line across Highland's property) and the fact that the township made the promise "[t]o induce Plaintiff to purchase the property and develop it for manufactured homes" (appendix, p 21a, ¶ 7) to accommodate the township's desire to isolate and limit manufactured home development in the township. *Id.,* ¶ 5. The fact that the township was in the process of planning a sewer project also supports a conclusion that the township should reasonably have expected Highland's reliance on the township's promises. Appendix, p 34a (court of appeals opinion).

- Highland's justifiable and detrimental reliance on the township's promises: "Plaintiff justifiably relied upon Defendant's promises concerning the installation of the east-west sewer line and the date upon which sewer service would be available to Plaintiff's property by acquiring and approving [*sic*; should be "improving"] the property, by declining sewer service from the City of Howell, by not seeking approval of a privately owned wastewater treatment system, by not objecting, at that time, to the disproportionate special assessment allocated to Plaintiff, and by taking other actions. The actions taken by Plaintiff in reliance on Defendant's promises were detrimental to Plaintiff." Appendix, p 22a, ¶ 10. *Accord,* appendix, p 34a (court of appeals opinion).

- The promise must be enforced to avoid injustice: Appendix, p 22a, ¶ 13 (showing damages caused to Highland by its reliance on the township's promise). *Accord,* appendix, p 34a (court of appeals opinion).

The court of appeals analyzed each of these elements and found that the First Amended Complaint properly stated a claim for promissory estoppel. Appendix, p 34a.

2. These Claims Do Not Involve a Challenge to the Special Assessment

Although the township argues that the "gravamen" of the First Amended Complaint is a challenge to the special assessment, proof of the claims above does not require disputing the validity or amount of the special assessment. The First Amended Complaint states claims that stand on their own regardless of whether there was a special assessment. The elements of a breach of contract or promissory estoppel claim exist even if there never were a special assessment. The claims seek damages *different from* the amount of the special assessment levied against Highland's property (which is at issue in the pending tax tribunal action). If Highland succeeds on these claims, the special assessment will still be in effect and Highland will still have to pay it (to the extent that the tax tribunal determines it is valid). Regardless of the outcome of this case, it is the tax tribunal that will decide whether the special assessment will remain or be reduced or eliminated. Regardless of the result of the special assessment appeal, the tax tribunal will not award damages based on the township's failure to build the sewer line and make sewer service available to Highland by April 1997.

The prayer for relief in count I seeks only damages caused by the township's breach of its promises, not any change in the special assessment. Appendix, p 22a. (This is in contrast to the prayer for relief in the abandoned count II, which sought,

among other things, an order prohibiting collection of the special assessment and a declaration that the assessment was invalid. Appendix, p 24a, ¶¶ C and E.)

The township's attempt to argue that this case is about the special assessment is unavailing. Highland is not arguing—in count I of the circuit court amended complaint—that "the Township's actions attending the creation and implementation of the special assessment sewer districts were unlawful." Township brief, p 3. Rather, that is a claim in the abandoned count II. Appendix, p 23a, ¶ 19 ("Defendant's special assessment roll for the sewer improvements is invalid because it was adopted in violation of the statutes").

Nor is Highland arguing "that it has been damaged by the Township's decisions *relating to the creation and implementation of the special assessment sewer districts in issue.*" Township brief, p 3 (emphasis added). Rather, the claim is that the township did not keep its promises to make sewer service available by a specific date and to build a sewer line across Highland's property. Those promises are not dependent on creation of the sewer assessment district. They are independent promises that would exist even if the township did not create the sewer assessment district.

Nor is Highland arguing in this case that its assessment should be reduced because the township did not build the promised sewer trunk line. Township brief, p 8 (characterizing the complaint as claiming "that the Township cannot validly levy a special assessment based on the presence of the subject sewer line, later eliminate the line but then refuse to lower the assessment"). The damages set out in count I of the amended complaint (¶ 13) (appendix, p 22a) do *not* include the amount of the excessive assessment. The tax tribunal will determine separately what the proper amount of that

assessment should be—the value to Highland of having sewer service available without the sewer trunk line that the township has decided not to build. The damages in the circuit court case are distinctly different: They include the additional cost that Highland will have to incur to build its own sewer trunk line or sewage treatment system, damages from the loss in business because of the delay in construction and the opening of a nearby competitor before Highland could open, and the additional cost of construction and holding and improving the land caused by the delay. These are damages for breach of contract—giving to Highland the benefit of the bargain by putting it in the position it would have been had the township kept its promise of providing sewer service by a specific date and building a sewer line across Highland's property.

The township cites *Colonial Village Townhouse Co-op v Riverview,* 142 Mich App 474, 370 NW2d 25 (1985), as a case that is analogous. It is, however, readily distinguishable. In that case, the issue was "whether or not a city may assess an ad valorem garbage tax and not collect the garbage from certain described property owners . . . ." 142 Mich App at 477, 370 NW2d at 27. This was a direct "challenge [to] the validity of an assessment under the property tax laws." 142 Mich App at 478, 370 NW2d at 28. The case involved the legal issue whether the garbage tax assessment was valid when the city did not provide collection service to the plaintiff. The imposition of the assessment was an essential element of the claim. That issue—determining whether a tax statute authorizes a particular assessment—falls within the core of the tax tribunal's jurisdiction. The same cannot be said about this case, where the existence of the assessment is not a necessary element of Highland's claim for breach of contract

and promissory estoppel. Those claims stand on their own, regardless of whether there was a special assessment.

The township's attempt to characterize Highland's complaint as one challenging the special assessment is off target. Nowhere does the township show that the complaint does *not* state a claim for breach of contract and promissory estoppel—claims that the court of appeals found were properly stated. Appendix, pp 33a-34a.

D. The Circuit Court Has Jurisdiction Because This Is Not a Challenge to a Decision Under the Property Tax Laws

The discussion above shows that claim before the circuit court was one for breach of contract and promissory estoppel. The question is whether the circuit court—not the tax tribunal—has jurisdiction over this damage claim. The circuit court has jurisdiction both under the plain language of the tax tribunal's jurisdictional statute and this Court's previous cases applying that statute.

1. The Statute Is Clear—There Is No Tax Tribunal Jurisdiction

The circuit court has jurisdiction "in all matters not prohibited by law." Const 1963, art 6, § 13. *Accord,* MCL 600.601(1) (general jurisdiction as altered by law); MCL 600.605 (original jurisdiction over civil actions except where jurisdiction is given to another court or denied by constitution or statute). Thus the circuit court has jurisdiction unless the tax tribunal act confers jurisdiction on the tribunal.

The tax tribunal act defines the tribunal's jurisdiction as follows:

The tribunal's exclusive and original jurisdiction shall be:

> (a) A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under property tax laws.
>
> (b) A proceeding for refund or redetermination of a tax under the property tax laws.

MCL 205.731.

This Court will apply the usual rules of statutory interpretation:

> As stated on numerous occasions by this Court, the primary goal of judicial interpretation of statutes is to discern and give effect to the intent of the Legislature. This Court discerns that intent by examining the specific language of a statute. If the language is clear, this Court presumes that the Legislature intended the meaning it has plainly expressed and the statute will be enforced as written.

Federated Publications, Inc v Lansing, 467 Mich 98, 107, 649 NW2d 383, 388 (2002).

The contract and promissory estoppel claims in this case do not fall within the language of MCL 205.731. The statute on its face does not include contract and quasi-contract claims.

Looking at each subsection separately, the claims in this case do not fit within those subsections. First, the contract and promissory estoppel claims do not seek "review of a final decision . . . under property tax laws." MCL 205.731(a). The township's promises are not "decisions . . . under property tax laws." The township's decision to break its promise to Highland to build the sewer trunk line across Highland's property is not a decision "under property tax laws." It goes beyond simply determining what the scope of a special assessment project would be. The additional element of a contractually binding promise—in addition to anything done under the tax laws—makes the decision a breach of contract or a basis for a promissory estoppel claim, something independent of the property tax laws. The claim would stand even if there were no

special assessment: Highland would still have a claim if the township promised sewer service and construction of the sewer line and, in exchange, Highland purchased and began to develop the property and then the township reneged on its promise. Highland's claims involve matters that go beyond and are different from a challenge to the amount or validity of the special assessment. They are not claims involving a decision "under property tax laws."

Second, count I seeks contract damages—loss of the benefit of the bargain. The claim therefore does not seek a "refund or redetermination of a tax." MCL 205.731(b).

The most telling fact that supports finding no jurisdiction in the tax tribunal is that the tribunal itself, when presented with a request to take jurisdiction over the same claims, held that "the Tribunal does not, however, have subject matter jurisdiction over Petitioner's [Highland's] breach of contract and/or promissory estoppel claim under MCL 205.731, as said claim is not a property tax matter . . . ." Appendix, p 26b. The tribunal's members are chosen for their expertise in the tribunal's narrow area of specialization. MCL 205.722(1) (requiring certain professional expertise or at least five years experience in tax matters). Deference is due to their view as to what constitutes a property tax matter. *Michigan Milk Producers Assn v Department of Treasury,* 242 Mich App 486, 491, 618 NW2d 917, 920 (2000); *Maxitrol Co v Department of Treasury,* 217 Mich App 366, 370, 551 NW2d 471, 473 (1996).

Divestiture of the circuit court's jurisdiction "cannot be accomplished except under clear mandate of the law." *Wikman,* 413 Mich at 645, 322 NW2d at 113; *Romulus,* 413 Mich at 738, 322 NW2d at 156. The statute does not clearly take the

contract and promissory estoppel claims out of the circuit court's jurisdiction. Thus, based on the language of MCL 205.731, these claims belong in the circuit court.

2. The Case Law Does Not Support Finding Tax Tribunal Jurisdiction

The statutory analysis above is enough to dispose of this case. If the statutory language is clear, "no further construction is necessary or allowed." *People v Koonce,* 466 Mich 515, 518, 648 NW2d 153, 154-155 (2002). But, if one were to find an ambiguity in the statutory language, this Court's case law supports the conclusion that this is not a tax tribunal matter.

a. Is There an Ambiguity in the Statute?

Judicial construction is appropriate if a statute is "ambiguous on its face . . . so that reasonable minds could differ with respect to its meaning." *In re MCI Telecommunications Complaint,* 460 Mich 396, 411, 596 NW2d 164, 174 (1999). The analysis above shows that there is no ambiguity. But, one might hypothesize an ambiguity in the statutory language by suggesting that the term "relating to" in MCL 205.731(a) is ambiguous because the statute does not define how close the relationship must be between the "final decision" being contested and the "special assessment." Dictionary definitions of "relating" or "relationship" are not helpful, since they do not and cannot define with precision the closeness of the required relationship. The township's argument is based on the relationship of Highland's claim to the special assessment. Township brief, pp 9, *et seq.* (arguing that Highland's contract claim "relates to" the special assessment). Thus examination of the nature of the relationship required to

confer jurisdiction is proper. Notably, the township does not discuss the language of the statute in any detail or apply principles of statutory construction to that language.

To the extent that this argument raises a question of whether there is an ambiguity in MCL 205.731 about what decisions "relate[] to" a special assessment, this Court's opinions in *Romulus City Treasurer* and *Wikman* provide guidance to construe this term in light of the structure and purpose of the tax tribunal act.

b. *Romulus* and *Wikman* Properly Construe Tax Tribunal Jurisdiction as Limited to Matters Within the Tribunal's Specialized Expertise

This Court decided *Romulus City Treasurer v Wayne County Drain Comm'r,* 413 Mich 728, 322 NW2d 152 (1982), and *Wikman v Novi,* 413 Mich 617, 322 NW2d 103 (1982), at the same time, analyzing the extent of the tax tribunal's jurisdiction and finding tribunal jurisdiction in one but not the other case. The Court set down principles in these cases for applying the tribunal's jurisdictional statute, MCL 205.731. The township does not argue that this Court should reexamine these cases. Rather it simply argues that the court of appeals misapplied them.

Although *Romulus* and *Wikman* engage in statutory construction, going beyond the clear language of MCL 205.731 without first finding an ambiguity in the statutory language, they show the proper approach if there is a finding of ambiguity in the statute. Those cases hold that a dispute is within the tax tribunal's exclusive jurisdiction only if it involves the factual basis for an assessment, something within the specialized expertise of the tax tribunal.

In analyzing the question of tax tribunal jurisdiction, in both cases this Court considered the tribunal's special purpose and the expertise of its members. *Wikman,*

413 Mich at 628-629, 322 NW2d at 106 (discussing the purpose to consolidate all tax challenges in a single forum; quoting MCL 205.722(1), which requires tribunal judges to be attorneys, certified assessors, real estate appraisers, certified public accountants, or persons with at least five years' experience in state or local tax matters); *Romulus,* 413 Mich at 737, 322 NW2d at 156 (noting the requirements of MCL 205.722(1)). The expertise of the tribunal members "relates primarily to questions concerning the factual underpinnings of taxes." *Romulus, id.* Thus:

> In cases not involving special assessments, the tribunal's membership is well-qualified to resolve the disputes concerning those matters that the Legislature has placed within its jurisdiction: assessments, valuations, rates, allocation and equalization. In special assessment cases, the tribunal is competent to ascertain whether the assessments are levied according to the benefits received.

Id., 413 Mich at 737-738, 322 NW2d at 156. It is this consideration of the tribunal's expertise that informed this Court's decision about the scope of tribunal jurisdiction in the two cases.

Wikman involved a claim that a special assessment was not proportionate to the benefit to the assessed property. 413 Mich at 647, 322 NW2d at 114. By contrast, the claim in *Romulus* "differ[ed] from the claim in *Wikman* that the assessments were not levied according to the benefits received." 413 Mich at 736, 322 NW2d at 155. The claim in *Romulus* was that the city "committed a constructive fraud by collecting money for administrative expenses through special assessments . . . ." 413 Mich at 733, 322 NW2d at 154. The crucial distinction between the two cases was that the claim in *Romulus* did not involve "the factual underpinnings of the pertinent assessments." 413 Mich at 736, 322 NW2d at 155. It was not a claim "that the assessments were not

levied according to the benefits received." *Id.* The Court thus held that the claims in *Romulus* were properly in the circuit court.

The opinions in both *Wikman* and *Romulus* leave something to be desired as a matter of statutory construction. They do not focus on the statutory language or examine its meaning. However, by looking at the specialized purpose and expertise of the tax tribunal, they can be a guide to proper statutory construction of the tribunal's jurisdictional statute. The question is how closely related to a special assessment must a decision be in order for it to be a decision "relating to" a special assessment within the meaning of MCL 205.731(a). If construction is needed, that section should be construed in the context of the entire tax tribunal act of which it is a part. Where there is an ambiguity, "this Court seeks to effectuate the Legislature's intent through a reasonable construction, considering the purpose of the statute and the object sought to be accomplished." *Macomb County Prosecutor v Murphy,* 464 Mich 149, 158, 627 NW2d 247, 252 (2001). *Accord, Frankenmuth Mut Ins Co v Marlette Homes, Inc,* 456 Mich 511, 515, 573 NW2d 611, 613 (1998). The Court must consider "both the plain meaning of the critical word or phrase as well as 'its placement and purpose in the statutory scheme.'" *Sun Valley Foods Co v Ward,* 460 Mich 230, 237, 596 NW2d 119, 123 (1999). Context is important. Individual phrases "must be read in context with the entire act, and the words and phrases used there must be assigned such meanings as are in harmony with the whole of the statute." *GC Timmis & Co v Guardian Alarm Co,* 468 Mich 416, 421, 662 NW2d 710, 713 (2003).

Although not articulating these principles of statutory construction, *Wikman* and *Romulus* applied them by looking to the tax tribunal's purpose and expertise. The

tribunal's purpose was to consolidate all tax matters in a single forum where judges with specialized expertise would decide the cases. This is shown by the provisions for certain expertise in the tribunal judges (MCL 205.722(1)) and the provisions that consolidate tax matters in the tribunal. MCL 205.731 (making the tribunal's jurisdiction exclusive); MCL 205.771-773 (transferring pending matters, appeals, and remands to the tax tribunal); MCL 205.774 (abolishing right to sue for a tax refund in other forums); MCL 205.779(2) (requiring actions that formerly could be brought in other forums to be filed in the tax tribunal); and MCL 205.779(3) (abolishing state board of tax appeals and corporation tax appeal board).

Construing MCL 205.731(a) in light of the tribunal's purpose and expertise—"in context with the entire act" (*GC Timmis,* 468 Mich at 421, 662 NW2d at 713)—"decisions" under MCL 205.731(a) should be viewed as "relating to" a special assessment only when they involve "assessments, valuations, rates, allocation and equalization" and "whether the assessments are levied according to the benefits received"—matters that involve "the factual underpinnings of the pertinent assessments." *Romulus,* 413 Mich at 737-738, 322 NW2d at 156. Indeed, the township itself accepts this view of tax tribunal jurisdiction. Township brief, p 6 ("Tribunal's primary function is to find facts and review agency decisions in a prompt, fair and efficient matter consistent with its expertise, which 'relates primarily to questions concerning "factual underpinnings" of taxes.'")

This is a "reasonable construction, considering the purpose of the statute and the object sought to be accomplished" (*Macomb County Prosecutor,* 464 Mich at 158, 627 NW2d at 252) because it limits matters in the tax tribunal to those within its purpose and

expertise while leaving ordinary disputes—such as the contract and promissory estoppel claims in this case—in the forum that normally deals with such disputes, the circuit court.

Applying that reasoning here, this case should be in the circuit court. Highland claims that the township violated its promises to install a sewer trunk line and provide sewer service by a specific time. The dispute is about the township's promises, not the amount of the assessment, not whether the assessment is proportionate to the benefit to Highland's property, and not "the factual underpinnings of the pertinent assessments." Because this does not involve a matter within the tax tribunal's specialized purpose and expertise, the circuit court—not the tax tribunal—has subject matter jurisdiction.

That was the holding of the court of appeals:

> [P]laintiff sought damages for a breach of contract. As such, we believe that count I was more analogous to the constructive fraud claim in *Romulus,* than the direct challenge to the special assessment in *Wikman.* As a result, count I did not raise legal issues falling within the Tax Tribunal's area of expertise.

Appendix, p 33a.

The township improperly suggests that the term "relating to" be construed by adopting the reasoning of Employee Retirement Income and Security Act (ERISA) preemption cases, citing *Mutual Life Ins Co v Insurance Bureau,* 155 Mich App 128, 399 NW2d 466 (1986), and *Shaw v Delta Air Lines, Inc,* 463 US 85, 103 SCt 2890, 77 L Ed 2d 490 (1983). Township brief, p 10 n4. Those cases are inapposite because they rely on the legislative history of ERISA to discern a congressional intent to broadly preempt state laws to achieve "the reservation to Federal authority [of] the sole power to regulate

the field of employee benefit plans." 463 US at 99 (quoting legislative history). One of the law's proponents stated: "This principle [of preemption of state law] is intended to apply in its broadest sense to all actions of State or local governments, or any instrumentality thereof, which have the force or effect of law." *Id.*

There is, however, no similar legislative history for the tax tribunal act. There is no reason why the intent of the phrase "relates to" in the context of federal ERISA legislation should carry over to state tax tribunal legislation and the township cites none. The better way to discern legislative intent is to review the structure and purpose of the tax tribunal act itself, as this Court did in *Wikman* and *Romulus.* Those cases properly resolve any ambiguity that the Court might find in the tax tribunal act.

The township suggests no principled limitation to the nature of the "relationship" that it advocates to invoke tax tribunal jurisdiction. If Highland's breach of contract claim "relates to" the special assessment, then so do a host of other claims that could arise in the course of a township constructing an improvement financed by a special assessment. The township argues that claims "relating to the creation and implementation of the special assessment sewer districts" are within the tax tribunal's jurisdiction. Township brief, p 3. Aside from being unfaithful to the statutory language defining the tribunal's jurisdiction, this broad definition would sweep within its scope all kinds of contract claims having nothing to do with taxation and the tax tribunal's expertise. Claims for breach of contract against the engineers who prepared drawings for the sewer improvements (and who prepared the special assessment rolls) or against the contractors who built the sewer system would arise out of "creation and implementation of the special assessment sewer districts." *Id.* A claim against the

township for nonpayment under those contracts would likewise arise out of implementation of the assessment districts. Claims involving damage to private property during construction of the sewer or claims involving easements granted by private property owners for construction of the sewer would likewise involve decisions implementing the sewer districts. Yet no one could reasonably argue that the legislature intended the tax tribunal to have exclusive jurisdiction over all such claims. The township's interpretation simply goes beyond a reasonable reading of legislative intent.

3. Results Under Other Statutes Are Not Relevant

The township ends its brief with a discussion of cases under other statutes, arguing that they stand for the proposition that the Court should "broadly interpret statutory grants of exclusive jurisdiction." Township brief, pp 14-16. These cases, however, do not involve the tax tribunal act or language similar to it. The task of statutory construction depends on the language of the statute. *Federated Publications,* 467 Mich at 107, 649 NW2d at 388. Thus cases reviewing different language in other jurisdictional statutes do not advance the analysis required in this case.

E. Highland Is Not Forum Shopping

A recurrent theme of the township's brief is that Highland is forum shopping to avoid bringing its claim in the tax tribunal. Throughout its brief, the township accuses Highland of "creative pleading" (township brief, p 2), trying to "camouflage the essence of its claim" (*id.,* p 7), and trying to "camouflage the true nature of this claim." *Id.,* p 12.

The township claims that "forcing it to litigate in the Circuit Court" will "work a material injustice upon the Township." *Id.*, p 4.

The implicit accusation in these statements is that Highland is trying dishonestly to hide the true nature of its claim in order to remain in the circuit court. But any suggestion that Highland is forum shopping is simply untrue. The proof of that is that, after the circuit court's dismissal, Highland tried to add the identical claim to its tax tribunal case. Appendix, pp 12b-15b (motion); pp 16b-23b (proposed amended petition). And the township gives no reason why litigating this claim in the circuit court rather than the tax tribunal will "work a material injustice." Any prejudice from delay is the township's responsibility, since it is the township that has avoided the merits of the claims and carried out this jurisdictional litigation for over five years.

It is immaterial to Highland where this claim is litigated, as long as it is in a forum that has subject matter jurisdiction so that any result is binding. Highland honestly believed—and, as explained above, still believes—that this is a breach of contract and promissory estoppel claim that is properly within the circuit court's jurisdiction. Highland is interested in a decision on the merits of its claim and wants to litigate it in whatever forum has subject matter jurisdiction. Highland presented its claim to the two forums that possibly could have jurisdiction and both rejected it for lack of jurisdiction. It is disingenuous for the township to suggest that Highland has engaged in "creative pleading" just to attempt to forum shop (with the obviously disadvantageous result that this litigation that has gone on now for more than five years without ever reaching the merits of Highland's claim).

F. The Claim Is Not Pending in the Tax Tribunal

As an alternative argument, the township seems to say that Highland is already litigating its contract claims in the tax tribunal. Township brief, p 3 n2 (citing Highland's trial brief in the tax tribunal case); p 13 ("the very substance of this claim has been presented to the Tax Tribunal for adjudication in Highland-Howell's pending special assessment appeal"). That is simply not the case, as the tax tribunal's denial of Highland's motion to add the contract claim shows. Appendix, pp 26b-27b.

A review of Highland's trial brief in the tax tribunal (appendix, pp 35a-67a) shows that Highland's basic claim there is that the township did not follow the proper statutory procedures for imposing a special assessment. The township correctly points out that elimination of the sewer trunk line from Highland's property years after the township imposed the special assessment is part of the tax tribunal case. It is part of that case because it is illegal for an assessing authority to approve an improvement, confirm a special assessment, eliminate the benefit to the assessed property, and still attempt to collect the assessment. MCL 41.721 (assessment may only be imposed on property benefited by the improvement); MCL 41.725(1)(d) (assessment must be imposed in proportion to the benefit to the property). The fact that there is some evidentiary overlap between the two cases (*i.e.,* the fact that elimination of the sewer trunk line is involved in both cases) does not mean that the *claims* are the same.[8] The township never sought dismissal on the ground that the same claim was pending in the tax tribunal

[8] There may be issue preclusion (collateral estoppel) consequences of factual findings once one of the two cases goes to judgment. But that does not mean that the claims are the same. In fact, the very existence of the doctrine of issue preclusion—the principle that factual findings in one case can be binding in another—shows that the same facts can be involved in different legal claims.

(MCR 2.116(C)(6)), the circuit court did not rule on that ground, and the township does not argue on appeal that that is a ground for upholding the dismissal. Indeed, such a dismissal would be improper because the two cases do not present "the same or substantially the same cause of action." *JD Candler Roofing Co v Dickson,* 149 Mich App 593, 598, 386 NW2d 605, 608 (1986).

Relief Sought

The township's appeal is without merit. Highland asks this Court to affirm the court of appeals and remand this case to the circuit court for decision on the merits of Highland's claims.

Alternatively, should this Court determine that the tax tribunal has jurisdiction over these claims, Highland asks that the Court remand the case to the tax tribunal. MCR 2.227(A)(1) (court can transfer case where there is lack of subject matter jurisdiction); MCR 7.316(A)(7) (Supreme Court can enter any appropriate order).

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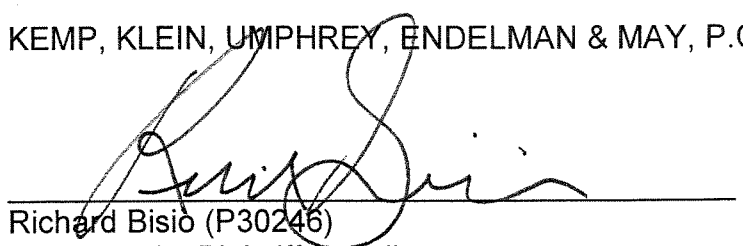

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